IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3146 OF 2007

Smt.Sunita S. Jaiswar ....Petitioner
V/s.
The Education Officer, Brihanmumbai Mahanagarpalika, Mumbai & Ors. ....Respondents

Mr.A.L. Gore for the Petitioner.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 27TH APRIL, 2007.

P.C. :

1. The Petitioner was selected as Shikshan Sewak against the reserved post. Her appointment was subject to the caste certificate being validated by the Caste Certificate Verification Committee. The Petitioner's caste certificate was forwarded to the Committee which by the impugned order dated 17.3.2007 has rejected the same on the ground that the Petitioner is a migrant in the State of Maharashtra.

2. The contention urged on behalf of the Petitioner is that the Petitioner was born in the State of Maharashtra and consequently would be entitled to reservation at a local level in the State of Maharashtra. He consequently contended that the

Education Officer could not have terminated the probationry period of the Petitioner based on the appointment letter. Thus the said submission is that the action is without jurisdiction.

3. It is now settled law that the migrant in the State of Maharashtra is not entitled to benefits in the State of Maharashtra. Admittedly, the Petitioner's father comes from the State of Utter Pradesh. The birth of the Petitioner therefore in the State of Maharashtra is immaterial. The Petitioner becomes a migrant in the State of Maharashtra. She will be entitled to the benefits of reservation in the State of origin and not in the State of Maharashtra.

4. As far as the second contention is concerned, that merely because the Committee has not validated the caste certificate, the power of termination could not have been exercised. The very basis of the appointment was against reserved quota on the basis that the Petitioner was entitled to protection in the State of Maharashtra. Once the Tribunal have found that the Petitioner is a migrant in the State of Maharashtra, the order of the Education Officer dated 17.3.2007 cannot be faulted.

5. The learned counsel for the Petitioner states that the Petitioner should be considered against the open category. That is for the management if there is a open category vacancy to consider according to law. The management, it may be clarified, will have to follow the procedure for recruitment to open category, if there be a vacancy and the Petitioner can apply.

6. With the above observations, the Writ Petition is accordingly disposed of.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)